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February 2, 2004

MEMORANDUM TO: Members, Planning and Implementation Committee

FROM: Vanessa Zoe Morin, Research Analyst

RE: State Planning Commission State Planning Rules:
Subchapters 2-5

Attached is the State Planning Rule proposal for Subchapters 2-5. The document is comprised of the changes contained in the rule proposal (additions are **bold** and deletions are [bracketed]) and the proposed changes based on comments and proposed Commission initiated changes (tracking changes format).

In addition to the typographical and grammatical changes the major proposed changes for the rule adoption are located in the text at the following sections:

Subchapter 2

1. Add language regarding public participation for proposed Cross-Acceptance Work Programs and proposed schedules at N.J.A.C. 5:85-2.3(c).

Subchapter 3

2. Add language stating that a joint public information meeting will be held with each county planning board in each county for the purpose of providing information at N.J.A.C. 5:85-3.1(c) so that the language is consistent with the statute. Language will be deleted referencing that the Office of Smart Growth will provide public comments and responses pursuant to N.J.A.C. 1.6(a) because of the informational nature of these meetings.
3. Reorganize N.J.A.C. 5:85-3.6(a) so that the sequence of the subsections reflects the steps in which municipal Cross-Acceptance activities occur.
4. Specifically list in N.J.A.C. 5:85-3.6(a) the capital improvement program as an item that municipalities provide to the negotiating entity.

5. Add language at N.J.A.C. 5:85-3.6(c) and at N.J.A.C. 5:85-3.9(a) that clarifies that the Cross-Acceptance Report includes infrastructure needs that should be addressed in the Infrastructure Needs Assessment.
6. Add language that clarifies that the negotiating entity's Cross-Acceptance Report consider both county and municipal planning issues.
7. Add language regarding the distribution of Cross-Acceptance Reports by the Office of Smart Growth at N.J.A.C. 5:85-3.10(a).

Subchapter 4

8. Delete redundant reference to county planning board at N.J.A.C. 5:85-4.3(a) and N.J.A.C. 5:85-4.5(a).
9. Reinstate language proposed for deletion at N.J.A.C. 5:85-4.4 regarding municipal representation for negotiating plans.
10. Reorganize N.J.A.C. 5:85-4.5(a)1-3 to include reworded language concerning municipal negotiations that was proposed for deletion at current N.J.A.C. 5:85-4.5(b)3. Add at N.J.A.C. 5:85-4.5(b) those who have registered pursuant to N.J.A.C. 5:85-1.6(b) to those entitled to receive notice of the Statement of Agreements and Disagreements resulting from negotiation sessions at N.J.A.C. 5:85-4.5(b).
11. Add language in N.J.A.C. 5:85-4.6(a) that clarifies that it is the State Planning Commission that adopts the Statement of Agreements and Disagreements after the negotiating committee adopts a draft Statement of Agreements and Disagreements. Language is added to expand the distribution of the draft Statement of Agreements and Disagreements and to provide a time period for review and comment on that document prior to State Planning Commission action.
12. Add language consistent with the State Planning Act that specifies that cross-acceptance concludes with the approval of the Statement of Agreements and Disagreements by the State Planning Commission at N.J.A.C. 5:85-4.6(b).
13. Delete "with and" in N.J.A.C. 5:85-4.7(a) as it is redundant.
14. Delete the word draft before Impact Assessment at N.J.A.C. 5:85-4.7(b) as it is the Impact Assessment that is distributed.

Subchapter 5

15. Add language that specifies upon consideration of formal reports and the draft Final State Development and Redevelopment Plan and Impact Assessment, the State Planning Commission shall approve for distribution a draft Final State Development and Redevelopment Plan, including a draft Infrastructure Needs Assessment at N.J.A.C. 5:85-5.1(a).

SUBCHAPTER 2. PREPARATION OF A PRELIMINARY STATE DEVELOPMENT AND REDEVELOPMENT PLAN

5:85-2.1 Revising the State Development and Redevelopment Plan

(a) [Pursuant to the State Planning Act, N.J.S.A. 52:18A-199, the] **The State Planning Commission** shall revise and readopt the State Development and Redevelopment Plan **in accordance with the State Planning Act** [every three years]. In so doing, the **State Planning Commission** shall prepare and distribute a “[preliminary plan] **Preliminary Plan**” for cross-acceptance.

(b) The preparation, approval, and cross-acceptance of a [preliminary plan] **Preliminary Plan** pursuant to these rules notwithstanding, the current State Development and Redevelopment Plan shall continue to constitute the official State Development and Redevelopment Plan until such time as it is revised and readopted by the State Planning Commission in accordance with the State Planning Act and N.J.A.C. 5:85-[5.4(b)]**5**.

5:85-2.2 Approval of the Preliminary State Development and Redevelopment Plan [and authorization to transmit for cross-acceptance]

(a) The State Planning Commission shall solicit comments and recommendations from all State agencies, **appropriate Federal and regional agencies, county and municipal governments and from the public** regarding possible revisions of the current

State Development and Redevelopment Plan **by providing notice pursuant to N.J.A.C. 5:85-1.7(a).** [The State Planning Commission shall also conduct an appropriate number of public meetings and information sessions and utilize such other public outreach mechanisms as are necessary to gather comments and recommendations regarding possible revisions of the current State Development and Redevelopment Plan.]

(b) The State Planning Commission shall, after due consideration of any public comments and recommendations, **including those from municipal, county, regional, State, and Federal governmental agencies,** regarding the current State Development and Redevelopment Plan, approve a Preliminary State Development and Redevelopment Plan, **with the Cross-Acceptance Manual,** [for] **to commence** cross-acceptance and authorize its transmittal to each county and municipal planning board, governing body and chief executive, **clerk** and to [other] **those** interested persons and organizations **who have registered with the Office of Smart Growth in accordance to N.J.A.C. 5:85-1.6(b).**

5:85-2.3 [(Reserved)] **Cross-Acceptance Manual**

(a) The State Planning Commission's Cross-Acceptance Manual, adopted by resolution, shall include, at a minimum, a draft work program, a draft schedule, a sample negotiation agenda, and a sample Cross-Acceptance Report for participating negotiating entities to complete the cross-acceptance process. The Cross-Acceptance Manual shall provide adequate measures to ensure a timely and through

comparison of the Preliminary State Development and Redevelopment Plan with plans of municipalities, counties, regional and State agencies.

(b) Within 30 days of receipt of the Cross-Acceptance Manual, the negotiating entity shall either accept the included draft work plan and schedule or propose revisions to the draft work program and schedule to the Office of Smart Growth.

(c) In the event of the proposed changes to the draft work program and schedule are determined to be inadequate in any way, the Office of Smart Growth shall specify necessary changes to ensure an effective and efficient cross-acceptance process with adequate opportunity for public participation.

SUBCHAPTER 3. PROCEDURES FOR [CONDUCTING THE COMPARISON
PHASE OF CROSS-ACCEPTANCE] **COMPARING STATE, REGIONAL,
COUNTY, AND MUNICIPAL PLANS**

5:85-3.1 Commencement of [the comparison phase] **comparing plans**

(a) The purpose of comparing plans is to coordinate planning activities and establish Statewide-planning objectives and to solicit and receive findings, objections, and recommendations to the Preliminary State Development and Redevelopment Plan from the negotiating entities.

(b) [The comparison phase of cross-acceptance] Cross-acceptance shall commence on the official date of release, as established by the State Planning Commission, of the Preliminary State Development and Redevelopment Plan.

(c) The State Planning Commission shall conduct a joint public informational meeting with each county planning board in each county for the purpose of providing information on the Preliminary State Development and Redevelopment Plan not less than 45 nor more than 90 days after the release of the Preliminary State Development and Redevelopment Plan. The State Planning Commission shall provide notice of those meetings pursuant to N.J.A.C. 5:85-1.7(b). [The Office of Smart Growth shall provide summaries of public comment and responses pursuant to N.J.A.C. 5:85-1.6(a).]

5:85-3.2 Negotiating entities for [county and municipal] cross-acceptance

(a) The State Planning Commission shall negotiate plan cross-acceptance with each participating county planning board.

[(a)]**(b)** [With the distribution of the Preliminary State Development and Redevelopment Plan to the counties and municipalities, the Office of] **The State Planning Commission** shall transmit to each county a copy of the Cross-Acceptance Manual and a request for either a Notice of Participation or a Notice of Waiver **when it distributes the Preliminary State Development and Redevelopment Plan.**

[(b)] **(c)** Notices of **Participation or** Waiver [or Participation] shall be transmitted by each county to the Office of [State Planning] **Smart Growth** no later than 45 days after the official release of the Preliminary State Development and Redevelopment Plan. **Notice of that decision shall be provided in accordance with N.J.A.C. 5:85-1.7(d).**

1.-2. (No change.)

[(c)]**(d)** In the event that a county transmits a Notice of Waiver or fails to transmit a Notice of Participation within 45 days after the official date of release of the Preliminary State Development and Redevelopment Plan, the State Planning Commission

shall, pursuant to N.J.S.A. 52:18A-202(b) [and N.J.A.C. 5:85-3.4], designate an appropriate entity, or itself, to assume the responsibility of negotiating entity for cross-acceptance for each such county. **The State Planning Commission shall designate an appropriate negotiating entity, or itself, to participate in cross-acceptance in the place of the non-participating county, after having first consulted with the county and the entity to be designated as the negotiating entity and having secured that entity's commitment to participate in the cross-acceptance process.**

5:85-3.3 Optional joint county cross-acceptance agreements

[The Office of State Planning shall encourage the governing bodies of the counties] **Counties**, especially those located within the purview of an existing regional planning agency or metropolitan planning organization, **are encouraged** to enter into intergovernmental agreements for consolidated or coordinated participation in cross-acceptance **and if such an agreement is entered into notice of that agreement shall be provided pursuant to N.J.A.C. 5:85-1.7(d).** [If a county notifies the Office of State Planning of that county's desire to enter into such an agreement or to involve a regional planning agency or metropolitan planning organization in cross-acceptance, the Office of State Planning shall provide, at the county's request, technical assistance in the preparation of appropriate intergovernmental agreements and designations of negotiating entities.]

5:85-3.4 (Reserved)

5:85-3.5 (Reserved)

5:85-3.6 Municipal participation in the [comparison phase of] cross-acceptance **process**

(a) Each municipality in the State shall participate in [the comparison phase of] cross-acceptance by:

1. Providing to the negotiating entity the most up-to-date copies of the municipal master plans, land [development regulations] **use ordinances**, capital improvement program and other information and materials necessary for an effective comparison of the State **Development and Redevelopment** Plan with the planning policies of the municipality[.]; and

2. [Participation] **Participating** through official representation at cross-acceptance meetings convened by the negotiating entity~~[.]~~

3. **Holding a public meeting or hearing with notice provided pursuant to N.J.A.C. 5:85-1.7(d) and including all comments and responses in the municipal Cross Acceptance Report; and**

4. **After the public hearing, preparing a municipal Cross-Acceptance Report, as based on the Cross-Acceptance Manual, outlining the degree to which its plan is**

consistent with the Preliminary State Development and Redevelopment Plan, the degree to which its plan conflicts with the provisions of the Preliminary State Development and Redevelopment Plan, and proposed modifications to the Preliminary State Development and Redevelopment Plan or its plan. Public notice of issuance of the Cross Acceptance Report shall be provided pursuant to N.J.A.C. 5:85-1.7(d).]

(b) A municipal planning board may, at its option, and by duly adopted resolution, appoint a committee to represent the full board at negotiation sessions.

~~Within 45 days, should a municipality fail to participate in the cross-acceptance process and fail to file an individual municipal report, the municipality shall be deemed to have concurred and agreed with the cross-acceptance report filed by the negotiating entity.~~

(c) [The negotiating entity shall negotiate plan cross-acceptance with each participating municipal planning board.

1. A municipal planning board may, at its option, and by duly adopted resolution, appoint a committee to represent the full board at negotiation sessions.

2. ~~If~~ If a municipality is not satisfied with the [negotiating entity's] Cross-Acceptance Report, in whole or in part, prepared by the negotiating entity pursuant to N.J.A.C. 5:85-3.9(a) or if the negotiating entity does not file a Cross-Acceptance

Report, the municipality may file a separate report with the State Planning Commission, after holding a public meeting or hearing with notice provided pursuant to N.J.A.C. 5:85-1.7(d). The municipal Cross-Acceptance Report shall be submitted to the State Planning Commission within 45 days of either the negotiating entity filing its Cross-Acceptance Report or of the date the Cross-Acceptance Report was due to be filed if no such Report is filed by the negotiating entity and shall be in the form specified by the Office of Smart Growth in the Cross-Acceptance Manual. The Report shall outline the degree to which the municipality's planning is consistent with the Preliminary State Development and Redevelopment Plan, the degree to which its planning conflicts with the Preliminary State Development and Redevelopment Plan and any proposed modification to the Preliminary State Development and Redevelopment Plan or its plan and any infrastructure needs that should be addressed in the Infrastructure Needs Assessment. The individual municipal Cross-Acceptance Report shall also be filed with the negotiating entity and planning board of adjoining municipalities at the same time as it is filed with the State Planning Commission.

(d) If a municipality does not file a municipal Cross-Acceptance Report within 45 days of the filing of the Cross-Acceptance Report by the negotiating entity for the county that includes that municipality, then the municipality shall be deemed to have concurred and agreed with the Cross-Acceptance Report filed by the negotiating entity. If the negotiating entity for a county fails to file a Cross-Acceptance Report and any municipality within that county fails to file a municipal

Cross-Acceptance Report within 45 days of the date by which the negotiating entity was due to file its Cross-Acceptance Report, then each such municipality shall be deemed to have concurred and agreed with the provisions of the Preliminary State Development and Redevelopment Plan.

5:85-3.7 Regional and State agency participation in [the comparison phase of] **the cross-acceptance process**

(a) The Preliminary State Development and Redevelopment Plan shall be distributed to all appropriate regional **and State** agencies as determined by the State Planning Commission. Each such agency shall [be requested to] provide the **State Planning Commission** [with] **within three months** a report outlining the degree to which [their respective regional] **its plans, policies, and regulations are consistent with** [incorporates] the Preliminary State Development and Redevelopment Plan, the degree to which [their] **its plans, policies, and regulations** conflict[s] with the provisions of the Preliminary **State Development and Redevelopment Plan**, and **any** proposed modifications to the Preliminary **State Development and Redevelopment Plan** [and/or the regional] **or its plans, policies, and regulations**.

(b) The Office of [State Planning] **Smart Growth** shall provide each regional **and State** agency contacted pursuant to (a) above, notice of all public meetings **and hearings**

conducted pursuant to these rules within their respective areas of jurisdiction **[pursuant to N.J.A.C. 5:85-1.7(b)]**.

5:85-3.8 (Reserved)

5:85-3.9 Comparison of the Preliminary State Development and Redevelopment Plan with local and county plans and preparation of a negotiated cross-acceptance report

(a) The negotiating entity shall compare municipal and county plans with the Preliminary State Development and Redevelopment Plan [and establish] **by preparing a Cross-Acceptance Report, in accordance with the Cross-Acceptance Manual, outlining the degree to which the [negotiating entities] planning in the county and each municipality is consistent with the Preliminary State Development and Redevelopment Plan and the degree to which [its] those plans conflict with the provisions of the Preliminary State Development and Redevelopment Plan, and any proposed modifications to the Preliminary State Development and Redevelopment Plan, or the municipal plans or county plan and any infrastructure needs that should be addressed in the Infrastructure Needs Assessment; and submit the Cross-Acceptance Report to the [Office of Smart Growth] State Planning Commission and to [its] municipal planning boards in that county, to the Board of Chosen Freeholders and County Executive, if any, in that county, to the county planning board if the county is not the negotiating entity, and to the planning boards of adjoining counties.**

[1. The degree to which municipal and county plans have incorporated the various provisions of both the current and Preliminary State Development and Redevelopment Plan;

2. A detailed list of findings, recommendations, and objections concerning proposed revisions to the current State Development and Redevelopment Plan as represented in the Preliminary State Development and Redevelopment Plan;

3. The potential for modifications to local and county plans that would contribute to a higher degree of compatibility among local, county and State plans; and

4. The degree to which designated State Plan centers have carried out their respective planning and implementation agendas and any conditions placed on those centers by the State Planning Commission in the course of their original designation.

(b) Within six months of the official release of the Preliminary Plan, each negotiating entity shall prepare and file with the State Planning Commission, its municipal planning boards and the planning boards of adjoining counties, a cross-acceptance report. The cross-acceptance report shall present the results of the comparison exercise cited in (a) above in the form specified by the Office of State Planning in the Cross-Acceptance Manual. The cross-acceptance report shall also contain a proposed

negotiation agenda for consideration during the negotiation phase as described in N.J.A.C. 5:85-4.

(c) Any cross-acceptance report, or any parts thereof, not filed within six months of the official release of the Preliminary Plan may, at the discretion of the State Planning Commission, still be given consideration by the State Planning Commission or be an item of negotiation during the negotiation phase of cross-acceptance.]

[(d)](b) Should a [county] **negotiating entity** fail to file a [cross-acceptance report] **Cross-Acceptance Report**, or any part thereof, in substantial compliance with this chapter, the [county] **negotiating entity** shall be deemed to be in agreement with the provisions [,maps or projections] of the Preliminary State Development and Redevelopment Plan as they pertain to those parts of the report not filed or deemed not to be in substantial compliance.

[(e)](c) The [cross-acceptance report] **Cross-Acceptance Report** of each negotiating entity shall not be filed with the State Planning Commission until the governing body of each such county, or the designated negotiating entity, shall have authorized the transmittal of the [cross-acceptance report] **Cross-Acceptance Report** at a public **meeting or hearing for which notice was given pursuant to N.J.A.C. 5:85-1.7(d) or (e).**

5:85-3.10 **[(Reserved)] Distribution of Cross-Acceptance Reports by the Office of Smart Growth**

The Office of Smart Growth shall provide copies of all Cross-Acceptance Reports received by the State Planning Commission to each negotiating entity and to all appropriate state agencies. Those Reports shall be available to the general public at the Office of Smart Growth and on the Office of Smart Growth website.

5:85-3.11 **(Reserved)**

SUBCHAPTER 4. PROCEDURES FOR [CONDUCTING THE NEGOTIATION PHASE OF CROSS-ACCEPTANCE] **NEGOTIATING PLANS**

5:85-4.1 Commencement of [the negotiation phase] **negotiating plans**

(a) [The negotiation phase of cross-acceptance shall commence on a date specified by the State Planning Commission. Any time thereafter, the State Planning Commission can convene a negotiation session with any county that has submitted a cross-acceptance report in accordance with N.J.A.C. 5:85-3.9, or any municipality that has submitted an individual report accordance with N.J.A.C. 5:85-3.10] **The purpose of the negotiating plans is to attain consistency between municipal, county, regional, and State plans with the Preliminary State Development and Redevelopment Plan. The process is designed to result in a written statement specifying areas of agreements or disagreements and areas requiring modification by parties to the negotiation.**

(b) The State Planning Commission shall provide each [county or municipality submitting] **negotiating entity and [any] municipality that has submitted a Cross-Acceptance [report]Report** pursuant to [this chapter] **N.J.A.C. 5:85-3**, an opportunity for a sufficient number of negotiating sessions as determined by the **State Planning Commission's negotiating committee and shall provide notice of those negotiating sessions pursuant to N.J.A.C. 5:85-1.7(b).** [The State Planning Commission shall provide a minimum of 45 days public notice in a newspaper of general circulation of an

initial negotiation session with each county or municipality and appropriate notice of all subsequent negotiation sessions.]

[(c) All negotiation sessions referenced in N.J.A.C. 5:85-4.5 shall be open to the public.]

5:85-4.2 State Planning Commission representation [during the negotiation phase of cross-acceptance] **for negotiating plans**

(a) The State Planning Commission may authorize an appropriate committee to represent the Commission [during the negotiation phase of cross-acceptance] **to negotiate plans** by a duly adopted resolution of the **State Planning** Commission.

[(b) A minimum of three members of the authorized negotiating committee, and one member of the staff of the Office of State Planning, authorized by the Director, shall be present at any given negotiation session. Each negotiation session shall be chaired by the committee chairman or a duly authorized substitute.

(c) In the event that at least three members of the authorized committee are unable to attend a scheduled negotiation session, the Chairman of the State Planning Commission is authorized to appoint other members of the Commission to participate in the negotiation session.]

[(d)](b) The **State Planning** Commission may, at its discretion, direct the committee to reconsider a determination made at any given negotiation session as described in the periodic reports referenced in N.J.A.C. 5:85-4.5[(c)](b).

[(e)](c) All determinations made by the **State Planning** Commission's negotiating committee regarding revisions to the Preliminary State Development and Redevelopment Plan [and as set forth in N.J.A.C. 5:85-4.6(a)] shall be subject to the approval of the State Planning Commission [in the form of an interim plan].

5:85-4.3 [County] **Negotiating entity** representation [for negotiating plans](#) [during the negotiation phase of cross-acceptance]

[(a)] Pursuant to N.J.S.A 52:18A-202(b), the State Planning Commission shall negotiate plan cross-acceptance with each county planning board.]

[(b)](a) A [county planning board or the] **negotiating entity** may, at its option, and by duly adopted resolution, appoint a committee from among its members and staff[, including at least, but not limited to, two county planning board members,] to represent the [full board] [county planning board or other] **negotiating entity**[\[ies\]](#) at negotiation sessions.

[(c)](b) [All] **When the county planning board is the negotiating entity, all** determinations made by the county planning board regarding the Preliminary State

Development and Redevelopment Plan [and as set forth in N.J.A.C. 5:85-4.6(a)] shall be subject to the action of the county governing body. The determination will be presumed to be acceptable if the governing body fails to act within 45 days from when the determination was received.

5:85-4.4 [(Reserved)] Municipal representation for negotiating plans

- (a) Municipalities that are involved in individual negotiation sessions pursuant to N.J.A.C. 5:85-4.1 shall be represented at those sessions by a committee duly authorized by the municipal governing body.
- (b) All determinations made at these sessions by the municipality regarding the Preliminary State Development and Redevelopment Plan shall be subject to the action of the municipal governing body. The determination will be presumed to be acceptable if the governing body fails to act within 45 days from when the determination was received.

~~5:85-4.5~~ The 4.5 The negotiation process

[(a) The purpose of the negotiation phase is to attain compatibility between local, county and State Plans. The process is designed to result in a written statement

specifying areas of agreement or disagreement and areas requiring modification by parties to the negotiation.]

[(b)](a) Negotiation sessions shall be conducted as follows:

1. [Subsequent to pre-negotiation consultation among the staffs of the involved parties, ~~the~~The~~the~~ The staff of the Office of [State Planning] **Smart Growth** will meet with the authorized representatives of each ~~the~~ [county planning board] **negotiating entity** [ies], to reach agreement on issues raised in [county reports and municipal] **the Cross-Acceptance Reports** and **from the** public comment~~s~~ and to identify [unresolved] **those** issues requiring negotiation between the negotiating committee~~s~~ of the State Planning Commission and the [county] authorized representatives of the negotiating entities~~; and~~ [-].

2. Each municipality that submits an individual municipal Cross-Acceptance Report, pursuant to N.J.A.C 5:85-3.6(c), may choose to discuss and negotiate the issues presented in its Report with the Commission's negotiating committee, with the appropriate negotiating entity represented if the negotiating entity has filed a Cross-Acceptance Report. Prior to such discussion and negotiations, the committee designated by the municipality pursuant to N.J.A.C. 5:85-4.4 shall meet with the staff of the Office of Smart Growth to reach agreement on those issues raised in the municipal Cross-Acceptance Report and from the public comments requiring negotiation between the negotiating committee and the authorized representatives of the municipality. [The

negotiating committees of the Commission and the [county] **negotiating entities** will meet [to confirm agreements and] to negotiate [any unresolved] **those** issues [identified in (b)1. above]].

{ 3. The State Planning Commission's negotiating committee and the authorized representatives of each negotiating entity will meet to negotiate those issues identified in (a)1. above. The State Planning Commission's negotiating committee and the authorized representatives of each municipality involved in individual negotiation sessions pursuant to N.J.A.C. 5:85-4.1 will meet to negotiate those issues identified in (a)2 above.

[Municipalities that submit individual municipal reports, pursuant to N.J.A.C 5:85-3.10, may choose to discuss and negotiate the issues presented in their report with the Commission's negotiating committee, with the appropriate negotiating entity represented. Prior to such discussion and negotiations, municipalities shall meet with the staff of the Office of State Planning to identify unresolved issues and to recommend revisions to the Preliminary State Development and Redevelopment Plan requiring negotiation between the committee and the municipality.}]

[(c)](b) Agreements reached during negotiation sessions and any remaining disagreements shall be published by the Office of [State Planning] **Smart Growth** in periodic reports which shall be available to the general public at the Office of [State Planning] **Smart Growth and on the Office of Smart Growth web site**, county offices and State depository libraries. Further distribution shall be made to the **State Planning Commission and the parties involved** and to those interested persons and organizations

who have registered with the Office of Smart Growth pursuant to N.J.A.C. 5:85-1.6(b).

[Periodic public meetings shall be conducted by the Commission's negotiating committee for the purpose of taking comments on these reports. The committee shall provide a minimum of 10 days public notice in a newspaper of general circulation of these meetings.]

5:85-4.6 Completion of [the negotiation phase of] cross-acceptance [and approval of an Interim State Development and Redevelopment Plan]

~~(a) Cross-acceptance shall conclude, with a Statement of Agreements and Disagreements, on a date specified by the State Planning Commission. Public notice of the Statement of Agreements and Disagreements shall be provided pursuant to N.J.A.C. 5:85-1.7(d) or (e).~~

~~[(a)](b)~~ When the State Planning Commission's negotiating committee believes that the [county and municipal] negotiations have produced the highest degree of agreement among the negotiating [parties] **entities**, the [Committee] **committee** shall submit a **report containing a** summary of its findings, including a [statement of agreements and disagreements] draft Statement of Agreements and Disagreements resulting from each negotiation session, to the State Planning Commission, [the subject county and each county's respective municipalities] **the negotiating entities, and each municipality and county** and to those interested persons and organizations who have registered with the Office of Smart Growth pursuant to N.J.A.C. 5:85-1.6(b). The draft

Statement of Agreements and Disagreements shall also be available at the Office of Smart Growth and on the Office of Smart Growth's website.

(b) Cross-acceptance shall conclude when the Statement of Agreements and Disagreements is approved by the State Planning Commission. The State Planning Commission shall not act on the draft Statement of Agreements and Disagreements until at least 14 days after it is distributed pursuant to (a) above.

[(b)](c) The [Committee] **State Planning Commission's negotiating committee** shall forward to the State Planning Commission, for its consideration and approval, [an Interim] **a draft Final** State Development and Redevelopment Plan, reflecting recommended changes to the Preliminary State Development and Redevelopment Plan resulting from [the comparison phase, the negotiation phase, and other relevant information and materials] **cross-acceptance**. The [Committee] **State Planning Commission's negotiating committee** shall also forward to the **State Planning Commission** for its consideration and approval[, an Interim] **a draft** Infrastructure Needs Assessment[, and an Interim Statement of Agreements and Disagreements].

[(c)] The negotiation phase of cross-acceptance shall end with the approval of the Interim Plan by the State Planning Commission. The approval of an Interim Plan notwithstanding, the current State Development and Redevelopment Plan shall continue to constitute the official State Development and Redevelopment Plan until such time as it is revised and readopted by the State Planning Commission in accordance with the State Planning Act and N.J.A.C. 5:85-5.4(b).]

5:85-4.7 Impact Assessment of the [Interim] **draft Final** State Development and Redevelopment Plan

(a) [Pursuant to N.J.S.A. 52:18A-202.1 and 202.2, the] **The** State Planning Commission shall have prepared an assessment of the impacts of the [Interim] **draft Final** State Development and Redevelopment Plan relative to the impacts that would likely occur **[with and]** without a Plan. The results of the assessment shall identify desirable changes to be incorporated into the [final] **Final** State Development and Redevelopment Plan.

(b) The **[draft]** Impact Assessment shall be distributed to the Governor, [the] Legislature, and [the] governing bodies of each county and municipality, and made available to the general public. A period extending from 45 days prior to the first of the public hearings conducted pursuant to N.J.A.C. 5:85-5.2, to 30 days following the last of those hearings shall be provided for counties, municipalities, and other interested parties to review and respond to the Impact Assessment.

(c) After consideration of the results of the Impact Assessment, the State Planning Commission may choose to either amend or not amend the [Interim] **draft Final State Development and Redevelopment** Plan as appropriate.

SUBCHAPTER 5. PROCEDURES FOR [CONDUCTING THE] **ADOPTING THE FINAL PLAN** [REVIEW PHASE OF CROSS-ACCEPTANCE]

5:85-5.1 Commencement of Final Plan approval [the final review phase of cross-acceptance]

[(a) The purpose of the final review phase is to allow review of, and accept comment on, the Interim Plan, Interim Infrastructure Needs Assessment, Interim Statement of Agreement and Disagreements, and the Impact Assessment of the Interim Plan, with the goal of formulating a final State Development and Redevelopment Plan.]

Upon consideration of the formal reports of the negotiating entities and the State Planning Commission's negotiating committee[s], the draft Final State Development and Redevelopment Plan prepared by the negotiating committee and the Impact Assessment, the State Planning Commission shall approve for distribution [prepare and distribute] a draft Final State Development and Redevelopment Plan, which will also include the draft Infrastructure Needs Assessment. The draft Final State Development and Redevelopment Plan shall be distributed at least 14 days in advance of the first public hearing to each county and municipal planning board, governing body and chief executive, clerk and to those interested persons and organizations who have registered with the Office of Smart Growth pursuant [in accordance] to N.J.A.C. 5:85-1.6(b).

[(b) The final review phase shall commence on a date set by the State Planning Commission following the Commission's approval of any amendments to the Interim State Development and Redevelopment Plan reflecting changes made by the Commission based on their consideration of the Impact Assessment of the Interim Plan pursuant to N.J.S.A. 52:18A-202.1, and N.J.A.C. 5:85-4.7. Concurrent with the release of the Interim Plan, the Commission shall also release, with appropriate amendments, the Interim Infrastructure Needs Assessment, and the Interim Statement of Agreements and Disagreements].

5:85-5.2 Required public hearings

(a) There shall be [one] **a minimum of six** public hearings on the [Interim] draft Final State Development and Redevelopment Plan in [each of the 21 counties] **different locations throughout the state with notice provided pursuant to N.J.A.C. 5:85-1.7(b) and (c).** [The State Planning Commission may, upon the request of two or more counties, conduct a multi-county hearing in lieu of a separate hearing in each such county. Pursuant to N.J.S.A. 52:18A-202.2d, the public hearings are to be held no sooner than 45 days after the release of the Impact Assessment of the Interim Plan].

[(b) Pursuant to N.J.S.A. 52:18A-202c, the State Planning Commission shall give at least 30 days public notice of each hearing in advertisements in at least two newspapers which circulate in the area served by the hearing, and at least 30 days notice

to the governing body and planning board of each county and municipality in the area served by the hearing.

(c) The Interim State Development and Redevelopment Plan, Interim Infrastructure Needs Assessment, and Interim Statement of Agreements and Disagreements, shall be distributed to county and municipal planning boards and other interested parties not less than 14 days prior to the public hearings.]

[(d)](b) The public hearings shall be convened by the State Planning Commission, or by a committee of the Commission designated for that purpose, whereupon comments will be taken on the [Interim] **draft Final** State Development and Redevelopment Plan [and the accompanying documents cited in (c) above].

5:85-5.3 [County and municipal] **Municipal and county** [and municipal] review and comment [during the final review phase of cross-acceptance] **before adoption of Final State Development and Redevelopment Plan**

[(a) Counties and municipalities] **Municipalities and counties** may submit written comments to the State Planning Commission regarding the [effect of the Interim] **draft Final** State Development and Redevelopment Plan[, or Interim] **and the draft** Infrastructure Needs Assessment [on the agreements and disagreements reached during the negotiation phase of cross-acceptance,] at any time up to 30 days after the last public hearing conducted pursuant to N.J.A.C. 5:85-5.2.

[(b) Counties and municipalities may submit written comments to the State Planning Commission regarding the Impact Assessment of the Interim State Development and Redevelopment Plan at any time up to 30 days after the last public hearing conducted pursuant to N.J.A.C. 5:85-5.2.]

5:85-5.4 [Completion of the final review phase of cross-acceptance and adoption]**Adoption of the Final State Development and Redevelopment Plan**

[(a) The final review phase shall end 30 days after the last public hearing conducted pursuant to N.J.A.C. 5:85-5.2.]

[(b) Pursuant to N.J.S.A. 52:18A-196 et seq. the]**The State Planning Commission shall adopt a [final]Final State Development and Redevelopment Plan, which includes the Infrastructure Needs Assessment, no sooner than 30 days and no later than 60 days after the last public hearing conducted pursuant to N.J.A.C. 5:85-5.2. Within 45 days of the State Planning Commission adopting the Final State Development and Redevelopment Plan, the Executive Director of the Office of Smart Growth shall provide notice of said adoption pursuant to N.J.A.C. 5:85-1.7(i).**

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STATE PLANNING COMMISSION

State Planning Rules

Readoption with Amendments: N.J.A.C. 5:85

Adopted Repeals: N.J.A.C. 5:85-3.4, 3.5, 3.8, 3.10, 3.11, 4.4, 6, 7.7, 7.13, 8.4, 8.7, 8.8, 8.10

Timeline of Proposed Rule Change Process

Proposed: September 2, 2003 at 35 N.J.R. 4001

Adopted: February 18, 2004 by the State Planning Commission, Timothy J. Touhey, Chairman

Filed: February 20, 2004 as R.2004 d.X, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3)

Authority: N.J.S.A. 52:18A-203.

Effective Date: February 18, 2004, Readoption

March 15, 2004, Amendments and Repeals

Expiration Date: February 18, 2009

Summary of Public Comments and Agency Responses

The State Planning Commission hereby readopts the State Planning Rules at N.J.A.C. 5:85 with amendments and repeals. The proposal for these rules was published in the New Jersey Register at 35 N.J.R. 4001 on September 2, 2003. The comment period for the proposal was scheduled to close on November 1, 2003 and was extended for an additional 30 days at the request of New Jersey Future.

In addition to publication of proposed State Planning Rules readoption with amendments and repeals in the New Jersey Register (35 N.J.R. 4001), the Office of Smart Growth notified interested parties via a letter dated August 25, 2003, notified the press through the State House Press Room, and posted notice that a rule had been proposed on the Office of State Planning web site. Notice of the State Planning Rule extension to December 1, 2003, was provided via a letter dated October 31, 2003, through the State House Press, and on the Office of Smart Growth web site.

The State Planning Commission received a total of 23 comments on the rule proposal: one individual, two municipalities, one municipal planning board, eight counties, one State agency, two law firms, and nine interest groups. Comments were received from a New Jersey citizen, Barbara Sachau, from the City of Ocean City Department of Community Development, the Township of Old Bridge Department of Community Development and Planning, T&M Associates for the Township of Manalapan Planning Board, the Bergen County Department of Planning and Economic Development, the Burlington County Economic Development and Regional Planning, the Camden County Improvement Authority, the Monmouth Planning Board, the Morris County Department of Planning & Development, the Ocean County Department of Planning, the Somerset

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County Planning Board, the Warren County Planning Board, the Pinelands Commission, the American Littoral Society, the Association of New Jersey Environmental Commissions and the New Jersey Conservation Foundation, the Coalition for Affordable Housing and the Environment (2), Goldberg, Mufson & Spar, P.A., the New Jersey Builders Association, the New Jersey Chapter of the Sierra Club, New Jersey Future, the New Jersey League of Municipalities, the Regional Planning Partnership, and Stickel, Koenig & Sullivan.

General Cross-acceptance Comments

1. COMMENT: The American Littoral Society requests that the State Planning Commission revise the State Plan and the State Plan Policy Map to reflect the new data layers from the Department of Environmental Protection prior to the start of Cross-Acceptance III.
2. COMMENT: The comments from the Regional Planning Partnership focus on three things: (1) that the State Planning Commission must consider all goals of the State Plan, not just the environmental goals; (2) that all state agencies should provide the State Planning Commission with the level of data that has already been provided by the Department of Environmental Protection; and (3) that the State Planning Commission establish specific standards for evaluating consistency with the State Plan. The Regional Planning Partnership recommends several consistency standards for consideration by the State Planning Commission.

RESPONSE: The State Planning Act requires that the State Plan consider input from state, county and municipal entities (N.J.S.A. 52:18A-200c). The rule proposal amended N.J.A.C. 5:85-2.2 to reflect this statutory requirement and specifically added counties, municipalities, federal and regional agencies, and the public to the current requirements. The rule proposal also recommends that the State Planning Commission seek input from state agencies prior to the release of the Preliminary State Plan which will include a proposed State Plan Policy Map. Pursuant to this change in the rules, the State Planning Commission will seek input from the public, all levels of government, and all state agencies when preparing the Preliminary Plan. This information will also be utilized during the Cross-acceptance process. As noted in the response to the comments on the definition of consistency, the State Planning Commission will continue to consider the most up-to-date data available, along with current regulations when making mapping and policy decisions.

The State Planning Commission will take the recommended consistency suggestions into consideration when drafting the Preliminary State Plan and guidelines for Plan Endorsement.

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3. COMMENT: The Association of the New Jersey Environmental Commission and the New Jersey Conservation Foundation asks the following question: If a negotiating entity fails to file a Cross-Acceptance Report, and therefore is deemed to be in agreement with Preliminary State Development and Redevelopment Report, are municipalities in the region also deemed to be in agreement?

RESPONSE: The State Planning Rules provides an opportunity for municipalities to submit a Cross-Acceptance Report if they are in disagreement with the negotiating entities' recommendations proposed in their Cross-Acceptance Report at N.J.A.C. 5:85-3.6(d).

Subchapter 2. Preparation of a Preliminary State Development and Redevelopment Plan

N.J.A.C. 5:82-2.1 Revising the State Development and Redevelopment Plan

N.J.A.C. 5:85-2.1(a)

4. COMMENT: The Ocean County Department of Planning and the Somerset County Planning Board fully support authorizing the State Planning Commission to recommend changes to the State Planning Act to significantly lengthen the time between the required readoption of the State Plan. The Somerset County Planning Board suggests that the timeframe be lengthened to six or ten years.

RESPONSE: The State Planning Commission agrees and urges the Legislature to take the necessary steps to lengthen the time between required preparation, revision, and readoption of the State Development and Redevelopment Plan.

N.J.A.C. 5:85-2.2 Approval of the State Development and Redevelopment Plan

5. COMMENT: The Monmouth Planning Board would like to offer their population and employment projections to be used by the State Planning Commission for the official State Plan.
6. COMMENT: The New Jersey Builders Association recommends adding a "growth-fit" component to the State Plan and the Cross-acceptance process. New Jersey Builders Association believes such a component would ensure that the State Plan, local planning, state agency regulations and infrastructure investments would be able to accommodate future growth. The New Jersey Builders Association strongly advocates that the State Planning Commission agree on population and employment projections for 2020. Further, the New Jersey Builders Association recommends that these projections be allocated among municipalities, used for evaluation during cross-acceptance, and be used for

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targeting Smart Growth areas. The New Jersey Builders Association provides suggested targets for the State Planning Commission to review.

RESPONSE: The State Planning Commission will present a range of population, employment and household growth projections as part of the Preliminary State Plan. The projections will be allocated by county, as the negotiating entity for Cross-acceptance. The county will be responsible for working with municipalities to incorporate New Jersey's growth and preservation needs into the Cross-acceptance reports. If county projections do not fall within the State Planning Commission's projected range, those projections can be negotiated with the State Planning Commission during Cross-acceptance.

N.J.A.C. 5:85-2.2(a)

7. COMMENT: The Sierra Club contends that the proposed deletion of the public outreach provisions eliminates the outreach effort on the part of the State Planning Commission. The Sierra Club suggests not removing this rule provision.

RESPONSE: The State Planning Commission contends that the public outreach provisions have not been eliminated, but rather have been rephrased at N.J.A.C. 5:85-1.6(b) and N.J.A.C. 5:85-1.7(a). This change provides ample opportunity for public input prior to the release of the Preliminary Plan.

N.J.A.C. 5:85-2.3 Cross-Acceptance Manual

8. COMMENT: Both the New Jersey State League of Municipalities and the Morris County Department of Planning & Development contend that the Cross-Acceptance Manual should be subject to the New Jersey Administrative Code rule-making requirements. In an effort to ensure predictability and reliability, the League recommends that the "the substance" of the document which has been approved by a State Planning Commission resolution, be included as part of the State Planning Rules, which Morris County believes would provide an opportunity for public comment on the "substance" of the cross-acceptance process.

RESPONSE: The State Planning Commission discusses and adopts both the Cross-Acceptance Manual and the Plan Endorsement Guidelines as part of its regulatory and legislative authority to promote coordinated and integrated planning. Both documents are subject to public comment during review by the Plan Implementation Committee of the State Planning Commission, and by the State Planning Commission itself. The Cross-Acceptance Manual and the Plan Endorsement Guidelines are intended to provide guidance for county and municipal officials. Further, these documents do not establish any additional mandatory requirements in addition to what is in the rule, and therefore do not require rulemaking.

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N.J.A.C. 5:85-2.3(c)

9. COMMENT: The Association of New Jersey Environmental Commissions and the New Jersey Conservation Foundation consider the inclusion of public participation programs critical to ensuring greater public participation.

RESPONSE: The State Planning Commission agrees with the suggestion by the Association of New Jersey Environmental Commissions and the New Jersey Conservation Foundation, and it has added language that specifies that attention to public participation be made at N.J.A.C. 5:85-2.3(c). To implement this provision, the Cross-Acceptance Manual will have suggestions on how negotiating entities can maximize public participation. The State Planning Commission encourages each negotiating entity to devise a strategy that is best suited to their relative circumstances.

Subchapter 3. Procedures for Comparing State, Regional, County, and Municipal Plans

N.J.A.C. 5:85-3

10. N.J.A.C. 5:85-3 COMMENT: The Morris County Department of Planning & Development believes that counties and municipalities should be permitted to recommend changes to the State Plan Policy Map during cross-acceptance. Morris County is concerned that if a municipality or county has updated its master plan, or its land use or infrastructure maps, and if map changes are limited to Plan Endorsement, there will be little confidence in the accuracy of the State Plan Policy Map. Furthermore, this doubt in the accuracy of the Map could lead to inconsistencies between plans that are endorsed and plans that have not received endorsement.

RESPONSE: The State Planning Commission agrees that map changes need to be part of the cross-acceptance process. A proposed State Plan Policy Map will be released with the State Plan and will be subject to cross-acceptance. Nothing in the existing or proposed State Plan rules precludes changes to the proposed State Plan Policy Map from being recommended during cross-acceptance. Plan Endorsement will present a further opportunity for counties and municipalities to make mapping changes that address smaller-scale, locally-specific mapping concerns, such as designating centers.

11. COMMENT: The New Jersey Builders Association recommends that public participation be expanded in cross-acceptance. The New Jersey Builders Association, however, does not make specific recommendations on what should be done beyond what is provided in the rules.

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12. COMMENT: The Sierra Club contends that the proposed cross-acceptance process amendments do not clearly delineate the role of local governments and lack detailed standards and goals for the process. Specifically, the concerns are that there are no guidelines for public participation, for public hearings concerning municipal Cross-Acceptance Reports, or for negotiation sessions.
13. The New Jersey State League of Municipalities contends that the public notice requirements described in this section will result in costs to municipalities and counties.

RESPONSE: The State Planning Commission considers an all-inclusive approach to cross-acceptance critical to the success of the process. To that end, the State Planning Commission and each negotiating entity must provide meaningful opportunities for public participation during cross-acceptance. *At a minimum*, the public may participate in cross-acceptance through the following means:

1. Participation in all public meetings, visioning sessions, outreach, etc.
2. Participation in 21 joint informational meetings for cross-acceptance.
3. Participation in the negotiation sessions, where the State Planning Commission arrives at a Statement of Agreements and Disagreements to be used in preparation of the draft Final State Plan.
4. Participation in each negotiating entity's comparison and negotiation sessions as required by the State Planning Act and outlined by the Cross-Acceptance Manual.
5. Submission of written comments to the State Planning Commission at any time up to 30 days after the last public hearing on the Final State Plan, as well as presentation of comments at regular monthly meetings and at any public hearing regarding cross-acceptance.
6. Written communication with municipal or county officials involved in cross-acceptance.
7. Comments presented at meetings of the various committees of the State Planning Commission as they relate to the work of those committees.
8. Participation in advisory committees.

These suggested public participation mechanisms are outlined at N.J.A.C. 5:85-1.6(b).

Further, public notification requirements in the rules were reorganized into sequential order. Notification for municipalities during cross-acceptance is required only if a municipality decides to submit a Cross-Acceptance Report. It is appropriate that the public have the opportunity to comment at every step of the process.

N.J.A.C. 5:85-3.1 Commencement of comparing plans
N.J.A.C. 5:85-3.1(c)

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14. COMMENT: As stated in the summary statement for N.J.C.A. 5:85-3.1(c), the State Planning Commission proposed to modify language in the existing N.J.A.C. 5:85-3.8 that stipulates that joint public informational meetings will be held in each county of the State. The Sierra Club observes that the proposed amendment at N.J.A.C. 5:85-3.1(c) specifies that a (one) meeting will be held, although the proposed amendment does not indicate with whom or where the meeting should be held. In addition, the Sierra Club recommends that reference to N.J.A.C. 5:85-1.6 (a) be deleted and replaced with the following: **“for hearings conducted pursuant to these rules.”**

RESPONSE: The State Planning Commission agrees that the rule proposal should be clarified. Language will be changed at N.J.A.C. 5:85-3.1(c) to specify that the State Planning Commission will conduct a joint public informational meeting in each county, pursuant to N.J.S.A. 52:18-202(a). Language will be deleted referencing that the Office of Smart Growth will provide public comments and responses pursuant to N.J.A.C. 1.6(a). As specified in the State Planning Act, the joint informational meetings are to be an informal process by which comments and recommendations are heard and discussed.

N.J.A.C. 5:85-3.6 Municipal participation in the cross-acceptance process

15. COMMENT: The Sierra Club comments that the proposed amendments at N.J.C.A. 5:85-3.6 seem to require a municipality to participate in cross-acceptance and to prepare a municipal Cross-Acceptance Report. Additionally, whether or not a municipality participates in cross-acceptance, if a municipality is not satisfied with the negotiating entity’s Cross-Acceptance Report, it may file an additional municipal Cross-Acceptance Report with the State Planning Commission.

RESPONSE: The State Planning Commission agrees that the rule proposal should be clarified and has added language at N.J.A.C. 5:85-3.6(d) that explains municipal Cross-Acceptance Reports.

16. COMMENT: Jeffrey Kantowitz of Goldberg, Mufson & Spar contends that municipalities, not counties, should be afforded status as negotiating entities. He observes that municipalities are the entities directly and substantially affected by the planning process. The County, as the negotiating entity, may not be able to successfully and impartially balance and articulate competing municipal objectives (of municipalities within the same county, or of municipalities in adjacent counties) as part of the planning process. The exclusion of municipalities at these stages diminishes direct public participation by representatives most closely affiliated and responsive to the affected public within municipalities.

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RESPONSE: The State Planning Act designated counties as the negotiating entities for cross-acceptance. The State Planning Rules provide a role for municipalities and require counties to negotiate with them as well. The State Planning Commission does not have the authority to change the role of municipalities to one that is inconsistent with the statute.

17. COMMENT: The Sierra Club observed that (1) there is no language that specifies to whom a municipal Cross-Acceptance Report should be submitted or when it should be submitted; (2) there is no language that stipulates that municipalities must hold a public meeting on their Cross-Acceptance Report and include all comments and responses in the municipal report or provide notice; and (3) although the rules specify when a municipal Cross-Acceptance Report should be filed, there is no language that indicates what should be done if the negotiating entity fails to file a report.

RESPONSE: The State Planning Commission agrees with these comments and has reorganized N.J.A.C. 5:85-3.6 of the rules to clarify how municipal cross-acceptance reports should be handled, including to whom they should be sent, public notification requirements, and what to do if the negotiating entity does not file a report. Similar clarifications were made in N.J.A.C. 5:85-3.9 of the rules as well.

N.J.A.C. 5:85-3.6(a)(4)

18. COMMENT: New Jersey Future contends that the Department of Community Affairs has commissioned a set of growth projections. It is essential that these projections be part of the cross-acceptance negotiation phase. Therefore, New Jersey Future suggests the following language be added: "...after a public hearing, preparing a municipal Cross-Acceptance Report, as based on the Cross-Acceptance Manual, outlining **how the municipality will accommodate its share of the projected growth in the region**, the degree to which its plan is consistent to the Preliminary State Development and Redevelopment Plan, the degree to which its plan conflicts with the provisions of the Preliminary State Development and Redevelopment Plan, and proposed modifications to the Preliminary State Development and Redevelopment Plan or its plan."

RESPONSE: Population projections will be released along with the Preliminary State Plan and therefore will be subject to cross-acceptance.

N.J.A.C. 5:85-3.7 Regional and State agency participation in the cross-acceptance process

19. COMMENT: The Warren County Planning Board asked whether the State Planning Commission considers the Highlands Coalition a regional agency. They also suggest that regional agency plans be cross-accepted directly with the State Planning Commission. They believe that public involvement at this stage should

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not require input from local governments, as the regional plans should have involved the public at the time of inception and preparation.

RESPONSE: The State Planning Commission does not consider the Highlands Coalition to be a regional agency. The State Planning Commission does, however, intend to work with the regional planning agencies in the state, which are listed in the Cross-Acceptance Manual, during the cross-acceptance process.

20. COMMENT: Warren County Planning Board questions when other State agencies will have public comment on their cross-acceptance reports. Before local cross-acceptance begins, counties and municipalities need to have the State agency cross-accepted plans in order to understand the impacts of State agency implementation of the State Plan.

RESPONSE: The Preliminary Plan will reflect consensus among the state agencies. State agencies will need to submit reports regarding agency functional plans that identify changes required to be consistent with the State Plan. Differences between functional plans and the State Plan will not result in changes to the State agency consensus or to the State Plan. Moreover, county and municipal cross-acceptance should not be delayed while State agencies are reviewing their functional plans and taking action to correct inconsistencies and to implement the State Plan.

21. COMMENT: The Somerset County Planning Board, the Ocean County Department of Planning, and the Pinelands Commission support the proposed amendment that requires regional and State participation in cross-acceptance. Somerset County contends that their participation will provide greater clarity, certainty, and efficiency in the cross-acceptance process. Somerset County suggests that language be added to include quasi-public agencies such as water and sewer to this section. Ocean County asked for this requirement during Cross-Acceptance II.

RESPONSE: The State Planning Commission accepts these comments. Agencies that include more than one county, or municipalities in more than one county, will be treated as regional agencies and will have to submit their plans in accordance with this section of the rules. Quasi-public agencies covering more than one municipality, but contained within one county, should work with the negotiating entity for their county. Municipal quasi-public agencies should work with their municipality during its cross-acceptance.

22. COMMENT: The Pinelands Commission appreciates acknowledgment of the need to reconcile differences between the Pinelands Comprehensive Management Plan (N.J.A.C. 7:50) and the State Development and Redevelopment Plan for the portions of the Pinelands National Reserve that fall outside of the State-

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designated Pinelands Area, as discussed in the summary comments provided for N.J.A.C. 5:85-3.7. The Pinelands Commission hopes that an opportunity to resolve these discrepancies will occur before Cross-Acceptance III is initiated.

RESPONSE: The State Planning Commission is committed to working with the Pinelands Commission to resolve mapping discrepancies regarding the Pinelands National Reserve as part of the Preliminary State Plan Policy Map.

23. COMMENT: The Association of New Jersey Environmental Commissions and the New Jersey Conservation Foundation indicates that regional entities and State agencies should be required to hold a public hearing on their submission and include any public comment in the final report.

RESPONSE: The State Planning Commission believes the current opportunities for public comment are sufficient. The Commission will review regional and State agency Cross-Acceptance Reports at Planning and Implementation Committee meetings and at full Commission meetings. Public comment is always scheduled and encouraged at these meetings.

N.J.A.C. 5:85-3.7(a)

24. COMMENT: The Morris County Department of Planning & Development believes that State agencies should engage in a negotiating process in addition to a cross-acceptance process. State agency members of the State Planning Commission should be required to engage in a negotiating session facilitated by the Chairman of the State Planning Commission to resolve differences between State agency plans and programs.

RESPONSE: The process for reaching consensus amongst the state agencies on the Preliminary State Plan did involve negotiations between State agencies. Many of these meetings were facilitated by the State Planning Commission and its Chairman.

N.J.A.C. 5:85-3.9 Comparison of the Preliminary State Development Plan with local and county plans and preparation of a negotiated Cross-Acceptance Report

25. COMMENT: Both the Monmouth Planning Board and the Warren County Planning Board voice their concern regarding the timeframe by which a Cross-Acceptance Report is to be submitted to the State Planning Commission. Monmouth suggests that a year be provided for the comparison and negotiation phase. In addition, Warren County observes that the timeframe to complete cross-acceptance is no longer stated in the rules. At the time the Warren County Planning Board reviewed the draft Cross-Acceptance Manual (September 2003) a timeframe of six months was specified. Warren County suggests that more time be afforded for comparing and negotiating plans and that a timeframe be included in the State Planning Rules.

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26. COMMENT: New Jersey Future has the following concerns regarding the cross-acceptance process: 1) Will the timeline provided allow ample time for county and municipal review of the new data layers and population projections? 2) Cross-acceptance III should be a review of the major changes needed in Planning Areas and Center boundaries of the State Plan Policy Map. Further, cross-acceptance should not be a discussion of all State Plan goals, strategies, and objectives.

RESPONSE: The State Planning Commission explicitly proposed to remove specified timelines for each segment of cross-acceptance, to allow for flexibility in the cross-acceptance process. The goal for Cross-Acceptance III is to target specific areas of concern for the comparison and negotiating sessions. As such, the process should not require the extensive investment of time as in years past.

The State Planning Commission sent all counties and municipalities the combined informational data layers to prepare them for subsequent changes to the Preliminary State Plan Policy Map. Counties have the opportunity to comment on these layers both before and during cross-acceptance. The State Planning Act requires that the State Planning Commission prepare, revise, and readopt the State Development and Redevelopment Plan every three years. It is the intention of the State Planning Commission to narrow the focus of discussions during Cross-Acceptance III. However, the entire State Plan, including its goals, strategies, objectives, as well as the State Plan Policy Map, are all subject to review during this process.

27. COMMENT: The Warren County Planning Board requests that the State Planning Commission provide a framework to measure consistency with the State Plan.

RESPONSE: The State Planning Commission is changing the definition of consistency in the rules at N.J.A.C. 5:85-1.4.

28. COMMENT: The Warren County Planning Board questions why a county's role in cross-acceptance is limited to being only a negotiating entity. Under the proposed rules, if the county files a notice of waiver, the notice waives the county's right to participate in cross-acceptance. Even if a county files a notice of waiver, it should have the same statutory right as municipalities to meet with the negotiating entity that would be appointed by the State Planning Commission.

RESPONSE: The State Planning Commission has not changed the participation of counties and municipalities in cross-acceptance. Rather, the terminology has been changed in order to clearly define that counties and municipalities are equal partners in the Cross-acceptance process. In addition, the process provides numerous opportunities for counties to provide comment. The County Planning Board will receive a copy of the Cross-Acceptance Report if it is not a negotiating entity, as will the Board of Freeholders and the County Executive. However, the most effective and

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direct opportunity for a county to participate remains in its role as a negotiating entity. |

N.J.A.C. 5:85-3.9(a)

29. COMMENT: New Jersey Future, as in section 5:85-3.6, suggests adding language to this section regarding the growth projections prepared by the Department of Community Affairs so that the projections are considered during the cross-acceptance negotiation phase: "...the negotiating entity shall compare municipal and county plans with the Preliminary State Development and Redevelopment Plan by preparing a Cross-Acceptance Report, in accordance with the Cross-Acceptance Manual, **describing how the municipality will accommodate its share of the projected growth in the region, as well as** outlining the degree to which the negotiating entity's planning is consistent to the Preliminary State Development and Redevelopment Plan and the degree to which its plans conflict with the provisions of the Preliminary State Development and Redevelopment Plan, and any proposed modifications to the Preliminary State Development and Redevelopment Plan, or the municipal or county plan; and submit the Cross-Acceptance Report to the Office of Smart Growth and to its municipal planning boards, to the county planning board if the county is not the negotiating entity, and to the planning boards of adjoining counties."

RESPONSE: Population projections will be released along with the Preliminary State Plan and therefore will be subject to cross-acceptance.

Subchapter 4. Procedures for Negotiating Plans

N.J.A.C. 5:85-4

30. COMMENT: The Regional Planning Partnership requests clarification on why reference to the Interim Plan was deleted in the rules, even though it is referenced in the State Planning Act as a stage of cross-acceptance (52:18A-202.1f and g). How is this rule change consistent with the Act?

RESPONSE: The State Planning Act mentions both an interim plan and a draft final plan, but does not refer to a three-step process. It is the interpretation of the State Planning Commission that these terms are referring to the same step in the cross-acceptance process.

N.J.A.C. 5:85-4.1 Commencement of negotiating plans

31. COMMENT: The Warren County Planning Board suggests that the Office of Smart Growth summarize each negotiating entity's Statement of Agreements and

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Disagreements to determine specific recommendations. This concern addresses how the State Planning Commission has in the past conducted its negotiation sessions in each county. Without having all the facts, negotiating plans in each county will not ensure statewide consistency.

RESPONSE: The State Planning Commission agrees that the rule proposal should be clarified. Language has been added at N.J.A.C. 5:85-3.10 that provides for the distribution of all Cross-Acceptance Reports to each negotiating entity and all appropriate State agencies. All Cross-Acceptance Reports will be posted on the Office of Smart Growth's website.

32. COMMENT: The New Jersey State League of Municipalities contends that the public notice requirements set forth in this section will result in costs to municipalities and counties.

RESPONSE: The notification obligations for negotiating sessions outlined in this section are the responsibility of the State Planning Commission and the Office of Smart Growth, as staff to the State Planning Commission. Therefore, these notification obligations should not place additional burdens on municipalities or counties.

N.J.A.C. 5:85-4.1(b)

33. COMMENT: The Sierra Club recommends that instead of referencing this subchapter it should reference N.J.A.C. 5:85-3.6(c)(2).

RESPONSE: The State Planning Commission will consider Cross-Acceptance Reports from negotiating entities and municipalities pursuant to N.J.A.C. 5:85-3.6 and N.J.A.C. 5:85-3.9. Since this rule change refers to Cross-Acceptance Report requirements covered in both 5:85-3.6 and 3.9, it is appropriate to reference the entire subsection.

N.J.A.C. 5:85-4.1(c): Proposed new section

34. COMMENT: The Association of New Jersey Environmental Commissions and the New Jersey Conservation Foundation request that interested parties receive the Statement of Agreements and Disagreements. These associations suggest that a new section be added with the following language: **c) The Statement of Agreements and Disagreements resulting from each negotiation session, the State Planning Commission, the negotiating entities, each municipality and county, and the individuals and organizations registered with the State Planning Commission under 5:85-1.6 (b) of these rules.**

RESPONSE: The State Planning Commission agrees that the rule proposal should be clarified. Language has been added at N.J.A.C. 5:85-4.5(b) and N.J.A.C. 5:85-4.6(a)

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to specify that the negotiating entities and municipalities, as well as organizations that have registered with the Office of Smart Growth pursuant to N.J.A.C. 5:85-1.6(b), will receive copies of each negotiating entity's Statement of Agreements and Disagreements along with the State Planning Commission's negotiating committee's draft Statement of Agreements and Disagreements which will be presented to the State Planning Commission.

N.J.A.C. 5:85-4.2 State Planning Commission representation for negotiating plans

35. COMMENT: Both the Burlington County Department of Economic Development and Regional Planning and the Sierra Club recommend not deleting the provisions that specify membership of the State Planning Commission's negotiating committee. Based on Burlington County's experience, it would be prudent to have the presence of at least three Commission members, as they are the liaisons of the State and an integral part of the communication process.

RESPONSE: The State Planning Act does not specify negotiating committee membership or any other State Planning Commission committee membership. These provisions are being deleted to provide the State Planning Commission with flexibility in meeting its statutory obligations when creating committees.

N.J.A.C. 5:85-4.2(c) and 5:85-4.3(b)

36. COMMENT: The Sierra Club recommends that instead of referencing N.J.A.C. 5:85-4.6(a) it should reference N.J.A.C. 5:85-4.6(b).

RESPONSE: The State Planning Commission accepts this comment that the rule proposal should be clarified. Specific reference to N.J.A.C. 5:85-4.6(a) has been deleted at N.J.A.C. 5:85-4.2(c) and N.J.A.C. 5:85-4.3(b) as it is redundant to the action stated at N.J.A.C. 5:85-4.1(a).

N.J.A.C. 5:85-4.4 (Reserved)

37. COMMENT: The Sierra Club notes that the procedures described at current N.J.A.C. 5:85-4.4 and N.J.A.C. 5:85-4.5(b)(3) specify municipal and State Planning Commission negotiation sessions for municipalities who have chosen to submit a municipal Cross-Acceptance Report. The Sierra Club recommends that a similar procedure be outlined at N.J.A.C. 5:85-3.6(c)(2) as the proposed amendments delete the procedures.

RESPONSE: The State Planning Commission agrees with this comment that the rule proposal should be clarified. The language will be reinstated at N.J.A.C. 5:85-4.4 deleting specific reference to N.J.A.C. 5:85-4.6(a). At N.J.A.C. 5:85-3.6, the distinction of municipal participation has also been reinstated which highlights action to be taken if the negotiating entity does not file a Cross-Acceptance Report and if the municipality disagrees with the negotiating entities Cross-Acceptance Report.

N.J.A.C. 5:85-4.5 The negotiation process

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38. COMMENT: Jeffrey Kantowitz of Goldberg, Mufson & Spar contends that negotiating entities should include municipalities and private parties.

RESPONSE: The State Planning Commission defines negotiating entities at N.J.A.C. 5:85-1.4 as the following: “Negotiating entity” or “negotiating entities” means a county, or where a county has declined to participate in the cross-acceptance process, some other entity designated by the State Planning Commission that is responsible for comparing and negotiating the Preliminary State Development and Redevelopment Plan. Private parties or the general public may participate during the negotiation sessions. Language has been added to N.J.A.C. 5:85-4.5(a)2 and reinstated at N.J.A.C. 5:85-4.5(a)3 to specify negotiating committee involvement for the negotiating entities and municipalities.

N.J.A.C. 5:85-4.6 Completion of cross-acceptance

N.J.A.C. 5:85-4.6(a)

39. COMMENT: The Sierra Club recommends this section be clarified to indicate that it is the State Planning Commission that adopts the Statements of Agreements and Disagreements.

RESPONSE: The State Planning Commission agrees that the rule proposal should be clarified. Language has been added at N.J.A.C. 5:85-4.6(c) that specifies that it is the State Planning Commission that adopts the Statement of Agreements and Disagreements.

N.J.A.C. 5:85-4.6(b)

40. COMMENT: The Sierra Club recommends that sections N.J.A.C. 5:85-4.6(a) and N.J.A.C. 5:85-4.6(b) be reversed as follows: the State Planning Commission negotiating committee concludes negotiations; this committee prepares and submits summaries of findings and the Statement of Agreements and Disagreements. These documents would be forwarded to the State Planning Commission and negotiating entities. The State Planning Commission then reviews and adopts the Statement of Agreements and Disagreements. The Sierra Club also suggests that until the State Planning Commission adopts the Statement of Agreements and Disagreements, reference be made to a draft Statement of Agreements and Disagreements. The Sierra Club recommends that State Planning Commission not vote on the Statement of Agreements and Disagreements until at least 14 days after distribution of the draft Statement of Agreements and Disagreements (see N.J.A.C. 5:85-5.1(c)).

41. COMMENT: The Morris County Department of Planning & Development cautions that if a negotiating entity’s committee and the State Planning Commission do not reach a mutually agreed upon Statement of Agreements and Disagreements, cross-acceptance will fail. This implies that adequate time be

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provided for negotiating planning policies. In past negotiating sessions, several issues raised by Morris County were not addressed and many remain unresolved.

RESPONSE: The State Planning Commission agrees with the Sierra Club's recommendation to switch provisions N.J.A.C. 5:85-4.6(a) and N.J.A.C. 5:85-4.6(b). The State Planning Commission also added language at N.J.A.C. 5:85-4.6(c) that specifies that it is the State Planning Commission that adopts the Statement of Agreements and Disagreements and that the State Planning Commission shall not act on the draft Statement of Agreements and Disagreements until at least 14 days after it is distributed.

The State Planning Commission expects that improvements in the cross-acceptance process, including the broad distribution of the Cross-Acceptance Reports, individual Statement of Agreements and Disagreements, and draft Statement of Agreements and Disagreements, will give it ample opportunity to address all of the issues raised in the Cross-Acceptance Reports.

N.J.A.C. 5:85-4.6(c), 5:85-5.1, 5:85-5.4

42. COMMENT: The New Jersey Builders Association recommends that a draft Infrastructure Needs Assessment be prepared at the start of the cross-acceptance process rather than as the process is concluding.
43. COMMENT: The Somerset County Planning Board suggests that the Infrastructure Needs Assessment be included as part of the comparison and negotiating phase. Somerset County also suggests that the Infrastructure Needs Assessment be closely tied with the Plan Endorsement process to identify prioritization of infrastructure maintenance, enhancements, and upgrades. Somerset County supports the concept that the Infrastructure Needs Assessment will become a multi-year strategy which links land use to infrastructure planning, policy, and investment decisions. Somerset County would like clear direction of the purpose and objectives for the Infrastructure Needs Assessment.

RESPONSE: As part of cross-acceptance, the State Planning Commission requests information from negotiating entities concerning infrastructure needs. This information will help with the preparation of the Infrastructure Needs Assessment. The purpose of the Infrastructure Needs Assessment is to identify the capital investments in infrastructure that are needed to implement the State Plan. From a procedural standpoint, pursuant to N.J.S.A. 52:18A-199(b), the Infrastructure Needs Assessment is part of the State Plan and reviewed as a component of the draft Final State Plan revision. The State Planning Commission intends to take the Infrastructure Needs Assessment into consideration when reviewing Plan Endorsement petitions.

N.J.A.C. 5:85-4.7 Impact Assessment of the draft Final State Development and Redevelopment Plan

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44. COMMENT: Jeffrey Kantowitz of Goldberg, Mufson & Spar suggests that the Impact Assessment and the Infrastructure Needs Assessment should be the subject of an independent process of public review and comment before becoming part of the draft final State Plan. Further, the Impact Assessment and the Infrastructure Needs Assessment should be prepared by a non-New Jersey affiliated or related entity, so as to insure, on the basis of content and appearance, a completely independent and impartial analysis which is not subject to potential contentions of bias and conflict of interest.

RESPONSE: At N.J.S.A. 52:18A-202.2, the State Planning Act requires that an independent body prepare the Impact Assessment. At N.J.S.A. 52:18A-199(b), the State Planning Act requires that an Infrastructure Needs Assessment be prepared and adopted as part of the revised State Plan. The State Planning Commission will release a Request for Proposal, for preparing the Impact Assessment and Infrastructure Needs Assessment, to a broad audience. They will be conducted by an independent entity.

N.J.A.C. 5:85-4.7(a)

45. COMMENT: The Burlington County Department of Economic Development and Regional Planning suggests deleting the following proposed language “. . . **with and** without the State Plan” as it is unclear. The State Plan should be viewed as an evolutionary process and not in a vacuum. In addition, Sierra Club requests clarification that the draft Final State Development and Redevelopment Plan is adopted by the State Planning Commission and contains a prepared Impact Assessment.

RESPONSE: The State Planning Commission agrees that the rule proposal should be clarified. The Commission has deleted the words “with and” as requested, and added a reference to the “Impact Assessment” at N.J.A.C. 5:85-4.7(a).

Subchapter 5. Procedures for Adopting the Final Plan

N.J.A.C. 5:85-5.1 Commencement of Final Plan Approval

46. COMMENT: The Burlington County Department of Economic Development and Regional Planning requests that the following language be added to the following: “Upon consideration of the formal reports of the negotiating entities **and the Impact Assessment Study**, the State Planning Commission shall prepare . . .”
47. COMMENT: The Sierra Clubs recommends the following: Upon consideration of the formal reports of the negotiating entities and negotiating committee, the State Planning Commission shall **prepare and approve for distribution** a draft Final State Development and Redevelopment Plan, which also include a **draft** Infrastructure Needs Assessment.

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RESPONSE: The State Planning Commission agrees with both comments and made changes at N.J.A.C. 5:85-5.1(a) to address them.

N.J.A.C. 5:85-5.2 Required public hearings

N.J.A.C. 5:85-5.2(c)

48. COMMENT: The Sierra Clubs recommends retaining the provision that the draft Final State Development and Redevelopment Plan will be distributed not less than 14 days prior to the commencement of public hearings.

RESPONSE: The State Planning Commission agrees that the rule proposal should be clarified. Language has been added at N.J.A.C. 5:85-5.1(a) that specifies that the draft Final State Development and Redevelopment Plan will be distributed at least 14 days in advance of the first public hearing.